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Secret Service Agent MICHAEL GERARD POLSON
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

CAPT. JAMES LINLOR, pro se)	Case No.: 1:17cv13 (AJT/JFA)
)	
Plaintiff,)	PLAINTIFF'S REPLY OBJECTING TO
)	ASSUMED TSA PROTECTIVE ORDER FOR
v.)	ALLEGED SSI (SENSITIVE SECURITY
)	INFORMATION)
)	Not served on Plaintiff, so assumed reply
MICHAEL GERARD POLSON,)	
in his individual capacity)	Hearing date: 05 January 2018
)	Time: 10:00
Defendant)	Hon.: Judge John F. Anderson
)	

1. 3rd Party TSA was ordered on 16 November 2017 to provide a proposed protective order by 30 November. TSA did not comply, and requested an 11th-hour extension.
2. Plaintiff has not been served any copy of any TSA protective order request, hence this "reply" is an "assumed reply" based on Plaintiff's **guesses** of TSA's likely arguments.
3. For failure to serve Plaintiff a copy of TSA's Motion, TSA's request should be DENIED.
4. Due to TSA's continued indirect civil contempt of Court, TSA's request should be DENIED since precedent holds that Parties need not be granted "favors" by the Court such as protective orders, while in civil contempt for failure to produce critical evidence.
5. Plaintiff objects to any need for any protective order as a FALSE PREMISE.
 - a. TSA has already published significant alleged SSI without any protective order
 - b. TSA refuses to demonstrate (required per SSI requirements in Gordon v. FBI, and MacLean v. DHS) why excessive forcing genital striking standards are SSI for

1 “transportation safety” (which is the standard for TSA SSI, **not** “national security”
2 or other touchstones).

- 3 c. TSA’s production so far has included SOP and non-SOP evidence, and Plaintiff
4 has asked for non-SOP evidence, so TSA is improperly avoiding disclosure. TSA
5 also has redacted information (Exhibit A) without indicating if it was alleged SSI,
6 or a “red herring” meant to distract Plaintiff (and mislead the Court). Upon
7 questioning, TSA has refused to explain its redactions, or to mark them properly.
- 8 d. Plaintiff uses SSI (TSA and other Sensitive Security Information from FAA) in
9 his piloting job and cybersecurity jobs. Any court order would need to not restrict
10 Plaintiff’s existing required access and use.
- 11 e. Plaintiff has repeatedly requested to meet-and-confer with TSA and Defendant to
12 find an equitable solution for SSI. TSA has always refused, and even admitted (as
13 Plaintiff filed the conversation transcript in Plaintiff’s Motion for Sanctions
14 related to TSA’s Motion to Quash) that TSA has no intention of permitting
15 Plaintiff to view any true Excessive Force Guidance, IF such guidance even
16 exists!
- 17 f. TSA has been found in both Gordon, and MacLean, to **retroactively** attempt to
18 claim previously released material are SSI. Since this could include materials
19 already filed by TSA, or clearly not being SSI, Plaintiff respectfully suggests that
20 the Court carefully discriminate against broad brush requests to categorize
21 documents as SSI.
- 22 6. Plaintiff claims that since TSA has not demonstrated that any excessive force guidance
23 exists, that TSA is playing games merely to delay and frustrate production, and then
24 abuse any protective order to retroactively claim open materials are SSI, so as then to try
25 to cause further legal challenges to pro se Plaintiff.
- 26 a. **Defendent Polson has testified that TSA has no known Excessive Force**
27 **Guidance, in its SOP or training materials. TSA’s Motion is a farce.**
- 28 b. Plaintiff denies any premise that a Protective Order is necessary, or that the TSA
SOP is needed as a source. TSA should be required to demonstrate all potential
sources of any information for which it seeks a protective order, and WHY other-
than-SOP sources are NOT possible!

MEMORANDUM OF POINTS AND AUTHORITIES

7. Defendant Polson testified under oath that there are no “specific regulations on excessive force being taught in training or provided in SOP.” Therefore, there is nothing for a Protective Order to cover, **and** Plaintiff (since and before Nov 2nd and Plaintiff’s Motion against misleading filing by TSA in their Motion to Quash, clearly stated that Plaintiff is NOT seeking information necessarily from the TSA SOP, but from whatever sources are available, particularly those that are not alleged SSI to simplify disclosure!
8. From deposition testimony of Defendant, 20 Oct 2017:

Q Have you ever been guided by TSA to be careful not to use excessive striking force as it has been defined?

A I don't recall.

a. And further on in the same testimony:

Q Do TSA regulations permit use of excessive force in passenger pat downs?

A Again, I do not recall any specific regulations on excessive force being taught in training or provided in SOP.

b. And further in the same testimony:

Q So based on that definition, is there a striking force of one object coming in contact with another as you slide your hand up from the thigh to the groin and genitals?

A I would agree there is.

Q Okay. Based upon the definition, what amount of striking force is reasonable?

A Only enough to properly ascertain that the area is clear for SOP.

Q Does SOP define a reasonable amount of striking force in this situation?

A Not to my knowledge.

Q How do you know what a reasonable amount of striking force is if it's not defined?

A When I can tell the difference between the leg and the torso.

Q Isn't it possible that the striking force could injure a passenger?

A By your definition of striking --

MR. SYLVERTOOTH: Form.

1 **A By your definition of striking force being any**
2 **contact period between two different things, there are**
3 **all sorts of things that can be considered excessive to**
4 **that fact.**

5 c. And further in the same testimony:

6 **Q So would you agree based on that that TSA**
7 **regulations do not permit use of excessive force against**
8 **passengers during pat downs?**

9 **page 210**

10 **A I couldn't speak to that, sir.**

11 9. The Hon. Judge Trenga, in issuing his Orders for TSA to produce the Excessive Force
12 Guidance critical to Plaintiff's case, noted in his orders of both 16 November and 07
13 December that it was doubtful whether any excessive force guidance truly needed to be
14 SSI in the first place!

15 a. In line with the Court, Plaintiff challenges TSA's basic premise in this case.

16 b. If TSA truly had excessive force guidance, then why wouldn't TSA have just
17 agreed to a protective order as Plaintiff requested over 3 months ago? Why not
18 meet en camera to have the Court review any disputes? TSA is simply stalling,
19 and trying to gain a tool that it can later wield and cause trouble for this case, and
20 for future plaintiffs.

21 10. For good cause as shown herein, any order by TSA is undoubtedly overreaching and
22 defective. Furthermore, several key points give caution to granting any TSA request:

23 a. Hon. Judge Trenga has already expressed doubt that alleged SSI related to
24 excessive force guidelines are SSI, particularly related to striking compliant
25 passengers' groins and genitals. Unless TSA is willing to submit per the
26 guidelines in *Gordon v. FBI* (N.D. Calif 2004), and *MacLean v. DHS* (135 S. Ct.
27 913 (2015)) as to how any alleged SSI is critical and relevant to "transportation
28 security" (the standard in those Courts), then TSA should be denied what those
29 Courts found to be an "overuse" of unnecessary restriction of information as
30 (alleged) SSI.

31 b. TSA has already filed with the Court documents marked as SSI, without concern
32 over protective orders. Does TSA claim that any protective order must also
33 encumber Court staff and the Judiciary? What about all the Government lawyers

1 and their staff? TSA's requests must not be one-sided, or capricious.

- 2 c. Plaintiff has not requested that information come from its Standard Operating
3 Procedures ("SOP") as proven via the transcript filed with the Court in Plaintiff's
4 reply objection to TSA's Motion to Quash and Plaintiff's related Motion for
5 Sanctions for TSA for false filing.
6 d. In fact, Plaintiff has been extremely cooperative and trying to work with TSA
7 since this lawsuit's inception. TSA has not acted in good faith, and now continues
8 to try to "game the system." Any claim that TSA's information must come from
9 its SOP, and therefore justify any Protective Order, is a FALSE PREMISE.
10 e. Plaintiff works daily with SSI (from TSA, and other agencies) as well as FOUO,
11 which Plaintiff not only reads, but is authorized to author, edit, redistribute, and
12 possess in Plaintiff's multiple occupations of aviation, cybersecurity, and related
13 new business ventures – all as an authorized holder/user/creator of SSI, etc. Any
14 restriction request from TSA must not encumber Plaintiff's livelihood, for which
15 he already has access, but simply not access to the particular genital-striking
16 guidance that TSA claims it has (and which Plaintiff doubts even exists).

17 11. Future potential plaintiffs should not forgotten! Sunlight and transparency are said to be
18 the best disinfectants. TSA has gone to extraordinary measures to not produce its claimed
19 excessive force guidelines, even when Plaintiff was offering to stipulate to a protective
20 order.

21 12. Plaintiff now sees TSA's "game" for what it is!

- 22 a. Just as Defendant himself has confirmed that he has no knowledge of any
23 Excessive Force Guidance, and
24 b. TSA was not given leave of the Court to deny production to Plaintiff, and TSA is
25 now in indirect civil contempt of court, and has made this case unlikely to be able
26 to proceed to trial by withholding critical evidence that would have changed the
27 course of Discovery, Disclosures, and Depositions, TSA now wishes to feign
28 tardy production while keeping it a secret.
c. TSA have further never explained why it is a secret and a threat to "transportation
security" over TSA's guidance for how hard TSA claims its employees can
forcefully strike compliant, non-suspect passengers in their genitals. Plaintiff

1 contends that there is no security threat, but that contrary to 49 USC 114(r), TSA
2 is using its SSI designation to cover up its own violations of passengers' rights to
3 not be hit in the genitals, and since this Court is now Ordering TSA to produce
4 these non-existent regulations (which would remove any claims of immunity
5 under *Graham v. Connor* if no guidance exists), TSA therefore wants to pretend
6 that some impossible guidelines exist, but then to get the Court to play along and
7 provide a protective order so TSA can willy-nilly start claiming all production in
8 this case (retroactively) is SSI, to frustrate and impede future proper lawsuits
against rogue TSA employees, in clear violation of 49 USC 114(r).

9 13. In Plaintiff's review of all of Defendant's and TSA's production, NOWHERE are
10 excessive force standards or authorization to use a striking motion ever authorized during
11 passenger pat-downs.

- 12 a. Plaintiff guesses that TSA is likely claiming that it wants to release part of its
13 Standard Operating Procedures under a Protective Order, but that is a ruse!
- 14 b. Plaintiff has explicitly requested (and filed with this Court) where Plaintiff is
15 seeking for TSA to comply with the Court's order regardless of where the
16 information might be located – and it is certainly better if TSA would look to non-
17 SSI source documents (since Plaintiff knows from helping to develop SSI for the
18 FAA that source documents are never “born SSI.”
- 19 c. TSA can and should (if it weren't trying to hide guidance) simply provide the
20 information order by the Court from other, non-SOP documents, or to explain
21 under *MacLean*, and *Gordon*, how the excessive force to be used against
22 cooperative passengers is SSI for transportation security.

23 14. Since the pro se Plaintiff has had to work so diligently to overcome TSA's tricks and
24 ruses, in the interest of justice, the Court should not demand that every reasonable and
25 proper plaintiff be required to go through the same arduous process as Plaintiff.

26 15. If TSA still seeks a Protective Order, this Court should at the very least, DENY any such
27 request from TSA while TSA itself is in INDIRECT CIVIL CONTEMPT for failing to
28 obey this Court's Orders of 16 November and 07 December. TSA is in no position to ask
this Court for favors for a protective order, over unproven alleged SSI related to groin
and genital striking, when TSA is refusing to obey this Court's Orders. Precedent

1 supports this Court DENYING any request from TSA while TSA refuses to comply with
2 the Court's Orders!

3 16. Plaintiff has not requested that information come from its Standard Operating Procedures
4 ("SOP") as proven via the transcript filed with the Court in Plaintiff's reply objection to
5 TSA's Motion to Quash and Plaintiff's related Motion for Sanctions for TSA for false
6 filing. Any claim that TSA's information must come from its SOP, and therefore justify
any Protective Order, is a FALSE PREMISE.

7 17. Plaintiff works daily with SSI (from TSA, and other agencies) as well as FOUO, which
8 Plaintiff not only reads, but is authorized to author, edit, redistribute, and possess in
9 Plaintiff's multiple occupations of aviation, cybersecurity, and related new business
10 ventures – all as an authorized holder/user/creator of SSI, etc. Any restriction request
11 from TSA must not encumber Plaintiff's livelihood, for which he already has access, but
12 simply not access to the particular genital-striking guidance that TSA claims it has (and
which Plaintiff doubts even exists).

13 18. For all good cause and shown herein, TSA's request for any unjustified protective order
14 not addressing the good reasons above, should be DENIED with prejudice, so as to put a
15 stop to TSA's continued false claims of SSI.

16 19. Does TSA attempt to claim restrictions on alleged SSI already provided to Plaintiff and
17 the Court? If so, then TSA's request should be DENIED as unfeasible and trying to
18 rescind information already in the "public square."

19 20. TSA is now delaying and refusing to cooperate, because they do not want the public to
20 know of any reasonable excessive force standard that TSA is required to operate within,
21 for fear of lawsuits or reasonable complaints for those few screeners who violate
reasonable standards of conduct and reasonable searches.

22 21. TSA's objections of excessive lawsuits or "chilling effects" have already been dispelled
23 by this Court at the Motions Hearing. TSA is now trying to hide its procedures to avoid
24 precedent and evidence based on this instant lawsuit.

25 22. A suggested order DENYING TSA's Motion, and requiring production of evidence is
26 included below.

SUGGESTED ORDER

Per the Court's orders of 16 November and 07 December, Plaintiff has already been ordered to be Covered Person under 49 USC 1520.7.

TSA 's Motion for a protective order is DENIED with prejudice, since TSA's repeated refusals to provide Excessive Force Guidance to assess reasonable genital pat-down searches do not constitute a threat to transportation security, and none of TSA's existing disclosures are similarly encumbered as SSI.

Furthermore, TSA seems to be improperly using 49 USC 114(r) to shield itself from illegal activity, which contravenes the statute 49 USC 114(r).

Evidence provided by TSA in this case is not considered Sensitive Security Information, regardless of markings.

It is so Ordered.

Hon.: _____ Date: _____

1 NO ATTORNEY ASSISTED IN THIS DOCUMENT'S PREPARATION.

2 I certify under penalty of perjury, that a copy of this document was served on
3 the date below, via mailing to the Court for filing and entry into the EC/CMF Court
4 Filing System.

5 Respectfully submitted, and filed with the declaration that all statements in this pleading
6 are true and correct under penalty of perjury.

7
8 Local Rule 7(E) and 37(E) Certification per Scheduling Order of 06 September 2017:

9 "Pro Se Plaintiff confirms that he has attempted, in good faith, to confer with and to
10 decrease and/or resolve any matters of disagreement related to discovery with
11 Defendant's Counsel, and to decrease, in every way possible, the filing of unnecessary
12 motions."

13 Date 26 Dec 2017 Signed /s/ (Capt. James Linlor)

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